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MONTANA LEGISLATIVE HISTORY

Chapter 263 Session L 1979
Bill House ____ Senate 338

History and final status sheet NA
Introduced bill X
Fiscal note NA
Third reading bill X
Final version of bill X

House Committee on Local Government
Hearing date(s)* 3-6 ____
____ ____
Executive action (vote) date(s)* 3-6
Comm. Report NA
Floor 2nd reading & vote 3-8
Floor 3rd reading & vote 3-10

Senate Committee on Local Government
Hearing date(s)* 2-7 ____
____ ____
Executive action (vote) date(s)* 2-7
Comm. Report 2-8
Floor 2nd reading & vote 2-10
Floor 3rd reading & vote 2-13

Conference or Free Conference Comm. ____ Yes X No
Hearing date(s)* ____
Executive action (vote) date(s)* ____

* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? ____ Yes X No
Committee ____ Report ____

NOTES: By Request of Code Commissioner.

An Act to Generally Revise & Clarify the Local Government Laws Relating to General Emergency & Protective Services, to Law Enforcement, to Fire Protection and to Cemetery Services

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Compiled by: rg
Date: 2-15-2018

CHAPTER NO. 263

SENATE BILL NO. 338

INTRODUCED BY PETERSON

BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

February 2, 1979	Introduced and referred to Committee on Local Government.
February 8, 1979	Committee recommend bill do pass. Report adopted.
February 9, 1979	Printed and placed on members' desks.
February 10, 1979	Second reading, do pass.
February 12, 1979	Considered correctly engrossed.
February 13, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 14, 1979	Introduced and referred to Committee on Local Government.
March 6, 1979	Committee recommend bill be concurred in. Report adopted.
March 8, 1979	Second reading, concurred in.
March 10, 1979	Third reading, concurred in.

IN THE SENATE

March 12, 1979	Returned from second house. Concurred in. Sent to enrolling.
	Reported correctly enrolled.

SENATE BILL NO. 338

INTRODUCED BY

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO GENERAL EMERGENCY AND PROTECTIVE SERVICES, TO LAW ENFORCEMENT, TO FIRE PROTECTION, AND TO CEMETERY SERVICES; REPEALING SECTIONS 11-1935 AND 11-2009, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-31-110, MCA, is amended to read:

"7-31-110. Effect of election. (1) If ~~it appears from the result of such election that~~ a majority of the votes cast were for the contract and bonds, then ~~said~~ the contract ~~shall be~~ is in full force and effect and the bonds shall be issued and disposed of in the manner provided in this part.

(2) If ~~it shall appear from the result of such election that~~ there was a tie vote or a majority of ~~said~~ the votes were cast against the contract and bonds, then the contract and surety bond given for its fulfillment ~~shall be null and~~ are void ~~and of no effect~~ and ~~said~~ the bonds ~~and none thereof~~ shall not be issued."

Section 2. Section 7-32-2103, MCA, is amended to read:

"7-32-2103. Limitation on number of deputy sheriffs. The whole number of deputies allowed the sheriff is one undersheriff and, in addition, not to exceed the following number of deputies:

(1) six in counties of the first, second, ~~and~~ or third ~~classes~~ class;

(2) two in counties of the fourth class;

(3) one in counties of the fifth, sixth, or seventh ~~and eighth classes~~ class."

Section 3. Section 7-32-2121, MCA, is amended to read:

"7-32-2121. Duties of sheriff. The sheriff must:

(1) preserve the peace;

(2) arrest and take before the nearest magistrate for examination all persons who attempt to commit or have committed a public offense;

(3) prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;

(4) perform the duties of a humane officer within the county with reference to the protection of dumb animals;

(5) attend all courts, except ~~justices~~ municipal, justices', and city courts, at their respective terms or sessions held within the county and obey their lawful orders and directions;

(6) command the aid of as many inhabitants of ~~his~~ the county as ~~may be~~ are necessary in the execution of ~~these~~ the

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sheriff's duties;

(7) take charge of and keep the county jail and the prisoners therein;

(8) endorse upon all notices and process the year, month, day, hour, and minute of reception and issue therefor to the person delivering them, on payment of fees, a certificate showing the names of the parties, the title of the paper, and the time of reception;

(9) serve all process or notices in the manner prescribed by law;

(10) certify in writing upon the process or notices the manner and time of service or, if he fails to make service, the reasons of this failure, and return the ~~same~~ papers without delay; and

(11) perform such other duties as are required ~~of him~~ by law."

Section 4. Section 7-32-2123, MCA, is amended to read:

"7-32-2123. Appointment of deputy sheriff to act as jailer. The sheriff may appoint two deputies in counties of the first, second, ~~and~~ or third ~~classes~~ class and one deputy in counties of the fourth, fifth, sixth, or seventh~~--and eighth classes~~ class who shall act as jailer and receive the same salary as other deputy sheriffs."

Section 5. Section 7-32-2132, MCA, is amended to read:

"7-32-2132. Liability for escape in civil actions. (1)

A sheriff who ~~suffers~~ fails to prevent the escape or rescue of a person arrested in a civil action without the consent or connivance of the party in whose behalf the arrest or imprisonment was made is liable as follows:

(a) When the arrest is upon an order to hold to for bail or upon a surrender in exoneration of bail before judgment, ~~he~~ the sheriff is liable to the plaintiff as for the bail.

(b) When the arrest is on an execution or commitment to enforce the payment of money, ~~he~~ the sheriff is liable for the amount expressed in the execution or commitment.

(c) When the arrest is on an execution or commitment other than to enforce the payment of money, ~~he~~ the sheriff is liable for the actual damages sustained.

(2) Upon being sued for damages for an escape or rescue, ~~he~~ the sheriff may introduce evidence in mitigation or exculpation.

(3) An action ~~cannot~~ may not be maintained against a sheriff for a rescue or for an escape of a person arrested upon an execution or commitment if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail or is retaken by the sheriff."

Section 6. Section 7-32-2143, MCA, is amended to read:

"7-32-2143. Mileage and expenses of sheriff in general. (1) Except as provided in 7-32-2144 and 7-32-2145,

in addition to the fees specified in 7-32-2141 and 7-32-2142, the sheriff shall receive for each mile actually traveled in serving any writ, process, order, or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail only his actual expenses when such travel is made by railroad or airline; and when travel is other than by railroad or airline, he shall receive a mileage allowance as provided in 2-18-503 for each mile actually traveled by him both going and returning and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail. He shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and ~~dieting~~ feeding such persons during such transportation. Where Whenever more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, ~~but~~ only one mileage ~~shall~~ may be charged.

(2) No mileage ~~shall~~ may be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county shall be paid over to the county treasurer and deposited in the county general

fund.

(3) (a) No mileage ~~must~~ may be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice, or paper when the same accompanies the summons and the service thereof may be made at the time of the service of the summons, ~~unless~~ except for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time or when any paper or papers are served on more than one person on the same trip, ~~but~~ only one mileage ~~must~~ may be allowed or charged; and in the service of subpoenas, ~~but~~ only one mileage ~~must~~ may be charged when the persons named therein live in the same place or in the same direction; but mileage ~~must~~ may be charged for the longest distance actually traveled. Any writ, order, or other paper for service must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed only from such place to the place of service. When two or more officers travel in the same automobile in the discharge of any duty, ~~but~~ only one mileage ~~shall~~ may be allowed.

(b) When any sheriff or constable serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case must

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may be allowed for less than 1 mile actually traveled."

Section 7. Section 7-32-2144, MCA, is amended to read:

"7-32-2144. Mileage and expenses of sheriff for delivery of prisoners and mentally ill persons. (1) ~~Sheriffs~~ A sheriff delivering prisoners at the state prison or ~~reform school~~ a juvenile correctional facility or mentally ill persons at the Warm Springs state hospital ~~shall receive~~ or other mental health facility receives actual expenses necessarily incurred in their transportation. The expenses ~~shall~~ include the expenses of the sheriff in going to and returning from ~~such~~ the institution. ~~They~~ The sheriff shall take vouchers for every item of ~~expenses incurred by them in such transportation~~ expense. The amount of these expenses, as shown by the vouchers when ~~served~~ presented by ~~said~~ the sheriff, shall be audited and allowed by the department of administration or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties. In determining the actual expense if travel is by a privately owned vehicle, the mileage rate shall be allowed as provided in subsection (2). No other or further compensation ~~shall~~ may be received by sheriffs for such expenses.

(2) ~~While~~ Unless otherwise provided, while in the discharge of his duties, both civil and criminal, the

sheriff ~~shall receive~~ receives a mileage allowance as provided in 2-18-503. The sheriff shall also be reimbursed for actual and necessarily incurred expenses for transporting, lodging, and ~~meals of~~ feeding persons ordered by the court as provided in 2-18-501 through 2-18-503. The county ~~shall~~ is not be liable for and the board of county commissioners ~~shall~~ may not pay for any claim of the sheriff or other officer for any other expenses incurred in travel or for subsistence in cases where mileage is allowed under this section, the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work."

Section 8. Section 7-32-4112, MCA, is amended to read:

"7-32-4112. Qualifications of policemen. (1) ~~(a) The members of a police department of any city at the time of their appointment under this part shall not be less than 20 years of age or more than 40 years of age.~~

~~(b)~~--The members of the police department on the active list of any city at the time of their appointment under this part ~~shall~~ may not be less than 18 years of age or more than 35 years of age, but this restriction ~~shall~~ does not apply to any member of any ~~present~~ police department as of July 2, 1973, ~~to police reserves provided for in this part, or~~ to honorably discharged persons who served in the armed forces of the United States in time of war, providing such time of

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service be is not less than 3 months, or to applicants for reinstatement under 7-32-4110.

(2) A police officer must be a citizen of the United States and meet the minimum qualifying standards for employment promulgated by the board of crime control."

Section 9. Section 7-32-4116, MCA, is amended to read:

"7-32-4116. Minimum wage of police in first- and second-class cities. (1) Each duly confirmed member of a police department of cities of the first and second class of Montana is entitled to a minimum wage for a daily service of 8 hours' work of at least $750 per month for the first year of service and thereafter at least $750 a month plus 1% of the minimum base monthly salary of $750 for each additional year of service up to and including the 20th year of additional service.

(2) This section ~~shall--apply~~ applies to ~~and-include~~ ~~all~~ cities and towns not of the first class which have heretofore elected ~~or-may-hereafter-elect~~ to come under the provisions of ~~[11-1017-to-11-1030--inclusive]~~ Chapter 120, Laws of 1929, as amended, or Chapter 335, Laws of 1974, as amended."

Section 10. Section 7-32-4303, MCA, is amended to read:

"7-32-4303. Control of shoplifting. The city or town council ~~has-power-to~~ may define shoplifting as ~~theft--in~~

~~conformance--with--law~~ provided in 46-6-501 and to punish persons found guilty thereof."

Section 11. Section 7-33-2312, MCA, is amended to read:

"7-33-2312. Organization of fire company. (1) Every ~~such~~ fire company organized pursuant to 7-33-2312 must choose or elect a foreman, who is the presiding officer, a secretary, and a treasurer and may establish and adopt bylaws and regulations and impose penalties, not exceeding $5 or expulsion for each offense.

(2) Every regularly organized fire department may adopt a department seal, stating the name of the particular fire department to which it belongs, ~~which-must-be~~ The seal is under the control of and for the use of the secretary and shall be affixed by him to exempt certificates, certificates of active membership, and such other documents as the bylaws may provide. The secretary of every department having a seal must take the constitutional oath of office and give such bond as the bylaws provide for the faithful performance of his duties."

Section 12. Section 7-33-4102, MCA, is amended to read:

"7-33-4102. Applicability of part. (1) The provisions of this part ~~shall-in-all--respects--be--applicable--to--and~~ ~~shall~~ govern and control fire departments in every ~~such~~ city

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or town organized under whatever form of municipal government except where this part is in conflict with the commission form of government provided for in part 42 of chapter 3.

(2) Where Whenever the provisions of this part do conflict with the provisions of chapter 3, part 42, pertaining to the commission form of government, the provisions pertaining to the commission form of government shall prevail.

~~(3) This part shall apply to organized fire departments in every city and town of the state of Montana regardless of the form of government under which said city or town may be operating or may at any time adopt.~~"

Section 13. Section 7-35-2122, MCA, is amended to read:

"7-35-2122. County tax levy. The board of county commissioners must, annually at the time of levying county taxes, fix and levy upon all property within ~~said~~ the cemetery district, an amount sufficient to raise the amount certified by the board of cemetery trustees to be raised by a tax on the property of ~~said~~ the district. The tax ~~so levied shall~~ may not exceed 4 mills on each dollar of taxable valuation on the property of ~~said~~ the district."

Section 14. Section 7-35-4104, MCA, is amended to read:

"7-35-4104. Cemeteries on public lands. Incorporated cities or towns and, for unincorporated towns or villages, the board of county commissioners of the county may survey, lay out, and dedicate a portion of the public lands situated in or near ~~such~~ the city, town, or village, not exceeding 5 acres, for cemetery and burial purposes. The survey and description thereof, together with a certified copy of the order made constituting the same land as a cemetery, must be recorded in the office of the county clerk of the county in which the same land is located."

Section 15. Repealer. Sections 11-1935 and 11-2009, R.C.M. 1947, are repealed.

-End-

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FRANK HAZELBAKER
VICE CHAIRMAN
CHET BLAYLOCK
PAT M. GOODOVER
ANA S. DOWLING
EXECUTIVE DIRECTOR
CODE COMMISSIONER
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LC0624

1979 Legislature
Code Commissioner Bill - Summary

Senate Bill No. 338

AN ACT TO GENERALLY REVISE AND CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO GENERAL EMERGENCY AND PROTECTIVE SERVICES, TO LAW ENFORCEMENT, TO FIRE PROTECTION, AND TO CEMETERY SERVICES; REPEALING SECTIONS 11-1935 AND 11-2009, R.C.M. 1947.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 7-31-110. This section is rewritten for clarity. In subsection (2), "surety" is added to avoid confusion with the reference to financing bonds in the section.

Section 2. 7-32-2103. In subsection (3), a reference to an eighth class county is deleted. There are no such counties. The highest class of county is seven.

Section 3. 7-32-2121. The section is rewritten for clarity. In subsection (5), municipal courts are added to the list of courts which the sheriff is not required to attend. The municipal court law (Title 3, chapter 6) does not require the sheriff's attendance.

Section 4. 7-32-2123. A reference to eighth class counties is deleted. See section 2.

Section 5. 7-32-2132. This section is rewritten for clarity and to utilize more modern usage.

Section 6. 7-32-2143. This section is rewritten for clarity. In subsection (3)(a), "unless" is changed to "except" for proper grammatical usage.

Section 7. 7-32-2144. This section is rewritten for clarity. In subsection (1), a reference to "reform school"

is changed to a "juvenile correctional facility" to use the present terminology; "state hospital" is changed to "Warm Springs state hospital" to use the correct terminology; and "other mental health facilities" is added for consistency with 53-21-132. In subsection (2), the introductory phrase "Unless otherwise provided for" is added to remove conflicts with other language (such as in subsection (1) for example).

Section 8. 7-32-4112. Subsection (1)(a) is deleted as inconsistent with the more recent language found in subsection (1)(b). Subsection (1)(b) is rewritten for clarity and to delete the reference to police reserves which is meaningless following the 1977 laws on reserve and auxilliary officers (Chapter 85, Laws 1977). Because of the deletion of police reserves, the reference to 7-32-4110 is added as it appears individuals applying for reinstatement were not intended to be subject to the age restrictions.

Section 9. 7-32-4116. In subsection (2), the internal reference at the end of the sentence is changed to session law references. There is no precise M.C.A. reference which corresponds to the R.C.M. reference (most of which has been repealed).

Section 10. 7-32-4303. The section is rewritten to provide a reference to 46-6-501. Section 46-6-501 contains a definition of shoplifting and both 7-32-4303 and 46-6-501 were enacted by Chapter 274, Laws of 1974.

Section 11. 7-33-2312. This section is rewritten for clarity.

Section 12. 7-33-4102. The section is rewritten for clarity. In subsection (2), "part 42" is changed to "chapter 3, part 42" to correct an inaccurate reference created during recodification. Subsection (3) is deleted as redundant.

Section 13. 7-35-2122. The section is rewritten for clarity, and in the first sentence the words "an amount" are added for grammatical purposes.

Section 14. 7-35-4104. This section is rewritten for clarity, and in the first sentence the words "a portion" are added for grammatical purposes.

Section 15. Repealer. Section 11-1935, R.C.M. 1947, is recommended for repeal. This section is superseded by 7-33-4128 for confirmed firefighters and by the minimum wage laws for probationary firefighters. Section 11-2009, R.C.M. 1947, is recommended for repeal. This section was held unconstitutional by the Montana Supreme Court in Great Northern Railway Co. v. Roosevelt County, 332 P2d 501.

46 th LEGISLATIVE SESSION

COMMITTEE ON LOCAL GOVERNMENT -- SENATE BILLS

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 306	1-31	2-7;2-10	2-10	2-10					
SB 307	1-31	2-7	2-7	2-7					
SB 308	1-31	2-7	2-7	2-7					
SB 310	1-31	2-7	2-7	2-7					
SB 314	2-2	2-7;2-10	2-10			2-10			
SB 330	2-1	2-8;2-10	2-10			2-10			
SB 332	2-2	2-7	2-7	2-7					
SB 333	2-2	2-7	2-7	2-7					
SB 334	2-2	2-7	2-7	2-7					
SB 335	2-2	2-7	2-7	2-7					
SB 336	2-2	2-7	2-7			2-7			
SB 337	2-2	2-7;2-10	2-10	2-10					
SB 338	2-2	2-7	2-7	2-7					
SB 339	2-2	2-7	2-7	2-7					
SB 340	2-2	2-7;2-10	2-10			2-10			
SB 350	2-3	2-7;2-10	2-10	2-10					
SB 352	2-3	2-13;2-15	2-15			2-15			

MINUTES OF THE MEETING
LOCAL GOVERNMENT COMMITTEE
MONTANA STATE SENATE

February 7, 1979

The meeting of the Local Government Committee was called to order by Chairman, George McCallum on February 7, 1979 at 7:00 p.m. in Room 405 of the State Capitol Building.

ROLL CALL: All members were present.

Dennis Taylor, Staff Researcher, was also present.

A very few visitors were in attendance, but did not testify. (See attachment.)

Larry Weinburger, Staff Attorney, lead the discussion on the Code Commissioner Bills as he is the one who worked on the bills. Mr. Weinburger stated that much of the legislation concerning these bills dates back to the 1880's and some of the language needed to be changed to fit the more recent legislation. Land holder and freeholder requirements have been stricken down by the codes. Mr. Weinburger stated that in reviewing the codes he decided on some things because he felt they would stand up better in court, if ever put to the test.

CONSIDERATION OF SENATE BILL 334: Senator Jesse O'Hara, of Senate District 18, is sponsor of Senate Bill 334. This bill is an act to amend local government laws relating to rural fire districts, hospital districts, and cemetery districts to delete taxpayer and freeholder requirements to vote in certain elections and to hold certain offices. Senate Bill 334 is designed to bring to the legislature's attention several problems related to taxpayer and freeholder requirements concerning certain activities related to fire districts, hospital districts and cemetery districts. Supreme court decisions by the Montana and United States Supreme Courts have called into question the constitutional validity of taxpayer and/or freeholder requirements for voting and holding office in areas which are of a general governmental nature.

CONSIDERATION OF SENATE BILL 336: Senator Pete Story, of Senate District 37, is the sponsor of the bill. This bill is an act to generally revise and clarify the local government laws relating to general provisions and to the creation, alteration, and abandonment of local governments. For the most part, this bill only had a few small things that needed to be changed.

CONSIDERATION OF SENATE BILL 333: Senator Robert D. Watt, OF Senate District 49, is the sponsor of this bill. Senate Bill 333 is an act to generally revise and clarify the local government laws relating to alternative forms of local government.

and freeholder requirements are deleted on various elections concerning financing of local government services.

CONSIDERATION OF SENATE BILL 314: Senator Max Conover, of Senate District 36, is the sponsor of Senate Bill 314. This bill is an act to generally revise and clarify the local government laws relating to business, agriculture, and livestock regulation and to week and pest control. In Sections 8 and 11, participation in certain activities is extended to residents and the public. The Committee felt that weed boards deal with a problem that principally burdens the landowner and that the term "landowner", therefore, should be left in the bill.

CONSIDERATION OF SENATE BILL 338: Senator Bob Peterson, of Senate District 42, is the sponsor of Senate Bill 338. This bill is an act to generally revise and clarify the local government laws relating to general emergency and protective services, to law enforcement, to fire protection, and to cemetery services. The term "8th class counties" was eliminated. There are no longer any 8th class counties.

DISPOSITION OF SENATE BILL 307: A motion was made by Senator Thomas that Senate Bill 307 receive a "DO PASS" recommendation from the Committee. Motion carried.

DISPOSTION OF SENATE BILL 332: A motion was made by Senator Watt that Senate Bill 332 receive a "DO PASS" recommendation from the Committee. Motion carried.

DISPOSITION OF SENATE BILL 339: A motion was made by Senator Rasmussen that Senate Bill 339 be given a "DO PASS" recommendation from the Committee. Motion carried.

DISPOSITION OF SENATE BILL 310: A motion was made by Senator Watt that Senate Bill 310 be given a "DO PASS" recommendation from the Committee. Motion carried.

DISPOSITION OF SENATE BILL 305: A motion was made by Senator Watt that Senate Bill 305 receive a "DO PASS" recommendation from the Committee. Motion carried.

DISPOSITION OF SENATE BILL 335: A motion was made by Senator Peterson that Senate Bill 335 be given a "DO PASS" recommendation from the Committee. Motion carried.

DISPOSITION OF SENATE BILL 308: A motion was made by Senator Rasmussen that Senate Bill 308 receive a "DO PASS" recommendation from the Committee. Motion carried.

DISPOSITION OF SENATE BILL 334: A motion was made by Senator Watt that Senate Bill 334 be given a "DO PASS" recommendation from the Committee. Motion carried.

DISPOSITION OF SENATE BILL 338: A motion was made by Senator Peterson that Senate Bill 338 be given a "DO PASS" recommendation from the Committee. Motion carried.

DISPOSITION OF SENATE BILL 333: A motion was made by Senator Watt that Senate Bill 333 be given a "DO PASS" recommendation from the Committee. Motion carried.

DISPOSITION OF SENATE BILL 336: A motion was made by Senator Story that Senate Bill 336 be amended on page 15. Motion carried.

A motion was made by Senator Story that Senate Bill 336 be given a "DO PASS, as amended" recommendation from the Committee. Motion carried.

ADJOURN: With no further business the meeting was adjourned at 10:40 p.m. with the next meeting to be held on Thursday, February 8, at 12:30 in Room 405.

George McCallum

CHAIRMAN, GEORGE MCCALLUM

Date Feb 7

ROLL CALL

LOCAL GOVERNMENT COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
GEORGE MCCALLUM, CHAIRMAN	✓		
LLOYD LOCKREN, VICE CHAIRMAN	✓		
MAX CONOVER	✓		
JESSE A. O'HARA	✓		
BOB PETERSON	✓		
A. T. (TOM) RASMUSSEN	✓		
PETE STORY	✓		
BILL THOMAS	✓		
ROBERT D. WATT	✓		

Each Day Attach to Minutes.

SENATE _____ COMMITTEE 016

BILL _____ VISITORS' REGISTER DATE 1-1

Please note bill no. (check one)

NAME	REPRESENTING	BILL #	SUPPORT	OPPO
[illegible] Henderson	[illegible]	[illegible]		?
[illegible]	[illegible]	[illegible]		?
[illegible]				

STANDING COMMITTEE REPORT

February 3 19 79

1

MR. President:

We, your committee on Local Government

having had under consideration Senate Bill No. 338

Respectfully report as follows: That Senate Bill No. 338

DO PASS

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George McCallum Chairman.

STATE PUB. CO.
Helena, Mont.

Excused: Conover, Dover, Fasbender, Graham, Severson, E. Smith, Thiessen.
Total 7

Absent or not voting: None.
Total 0

At the request of the President, and without objection, the Senate reverted to Order of Business No. 8.

SECOND READING OF BILLS (COMMITTEE OF THE WHOLE)

Senator Towe in the Chair.

Senate resumed. President Mathers in the Chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on Second Reading, recommend as follows:

That Senate Bill No. 93 do pass. Unanimously passed.

That Senate Bill No. 185 do pass. Unanimously passed.

That Senate Bill No. 296 do pass. Unanimously passed.

That Senate Bill No. 305 do pass. Unanimously passed.

That Senate Bill No. 307 do pass. Unanimously passed.

That Senate Bill No. 308 do pass. Unanimously passed.

That Senate Bill No. 310 do pass. Unanimously passed.

That Senate Bill No. 322 be moved to the bottom of the calendar.

That Senate Bill No. 328 do pass. Unanimously passed.

That Senate Bill No. 332 do pass. Unanimously passed.

That Senate Bill No. 333 do pass. Unanimously passed.

That Senate Bill No. 334 do pass. Unanimously passed.

That Senate Bill No. 335 be amended as follows:

1. Page 2, line 6.
Following: "each"
Strike: "justice of the peace"
Insert: "justice's"

2. Page 8, line 25.
Strike: "paid to the"

And, as so amended, do pass. Unanimously passed.

That Senate Bill No. 336 do pass. Unanimously passed.

That Senate Bill No. 338 do pass. Unanimously passed.

That Senate Bill No. 339 do pass. Unanimously passed.

That Senate Bill No. 322 do pass. Unanimously passed.

That the Committee rise and report. (Towe, Chairman)

Upon motion of Senator Towe, duly carried, the foregoing Report of the Committee of the Whole was adopted.

Third Reading

O'Hara, Palmer, Peterson, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.
Total 49

Noes: None.
Total 0

Excused: Thiessen.
Total 1

Absent or not voting: None.
Total 0

Senate Bill No. 334 was passed by the following vote:

Ayes: Aklestad, Anderson, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Norman, Olson, O'Hara, Palmer, Peterson, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, Stephens, Stimatz, Story, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.
Total 47

Noes: R. Smith.
Total 1

Excused: Thiessen.
Total 1

Absent or not voting: Blaylock.
Total 1

Senate Bill No. 336 was passed by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Norman, Olson, O'Hara, Palmer, Peterson, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.
Total 49

Noes: None.
Total 0

Excused: Thiessen.
Total 1

Absent or not voting: None.
Total 0

Senate Bill No. 338 was passed by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Norman, Olson, O'Hara, Palmer, Peterson, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.
Total 49

0169

2-13-79

Noes: None.
Total 0

Excused: Thiessen.
Total 1

Absent or not voting: None.
Total 0

Senate Bill No. 339 was passed by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Norman, Olson, O'Hara, Palmer, Peterson, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.
Total 49

Noes: None.
Total 0

Excused: Thiessen.
Total 1

Absent or not voting: None.
Total 0

CONSENT CALENDAR

House Bill No. 146 was concurred in by the following roll call vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Norman, Olson, O'Hara, Palmer, Peterson, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thomas, Towe, Turnage, Van Valkenburg, Watt.
Total 47

Noes: Hafferman, Mr. President.
Total 2

Excused: Thiessen.
Total 1

Absent or not voting: None.
Total 0

SPECIAL ORDERS OF THE DAY

Consent Calendar

SB 289 - Discussion

At the request of the President, and without objection, the Senate reverted to Order of Business No. 6.

MOTIONS

Upon motion of Senator Stephens, duly carried, the Senate recessed subject to the Call of the Chair.

Senate recessed at 4:31 p.m.

LOCAL GOVERNMENT COMMITTEE

46th Legislature

020

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 333	To clarify alternative forms of local government	2/14/79	WATT	Tuesday March 6	CONCURRED IN	3/6/79
SB 334	Allow on rural fire, hospital, cemetery districts to remove freeholder requirements on voting	2/14/79	O'HARA	Thursday March 6 12:30 pm	CONCURRED IN	3/6/79
SB 335	Generally revise laws relating to local government officers	2/15/79	LOCKREM	Thursday March 6	AS AMENDED CONCURRED IN	3/6/79
SB 336	Clarify general provisions on creating, altering, or abandoning local gov't	2/14/79	STORY	Thursday March 6	CONCURRED IN	3/6/79
SB 338	Clarify emergency, law enforcement, fire and cemetery laws	2/14/79	PETERSON	Thursday March 6	CONCURRED IN	3/6/79
SB 339	Clarify re: financial, administration and taxation	2/14/79	RASMUSSEN	Thursday March 6	CONCURRED IN	3/6/79

INTRODUCED BY Senate BILL NO. 338

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO GENERAL EMERGENCY AND PROTECTIVE SERVICES, TO LAW ENFORCEMENT, TO FIRE PROTECTION, AND TO CEMETERY SERVICES; REPEALING SECTIONS 11-1935 AND 11-2009, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-31-110, MCA, is amended to read:

"7-31-110. Effect of election. (1) If ~~it appears from the result of such election that~~ a majority of the votes cast were for the contract and bonds, then ~~said~~ the contract ~~shall be~~ is in full force and effect and the bonds shall be issued and disposed of in the manner provided in this part.

(2) If ~~it shall appear from the result of such election that~~ there was a tie vote or a majority of ~~said~~ the votes were cast against the contract and bonds, then the contract and surety bond given for its fulfillment ~~shall be null and~~ are void ~~and of no effect and said~~ the bonds ~~and none thereof~~ shall not be issued."

Section 2. Section 7-32-2103, MCA, is amended to read:

"7-32-2103. Limitation on number of deputy sheriffs. The whole number of deputies allowed the sheriff is one undersheriff and, in addition, not to exceed the following number of deputies:

(1) six in counties of the first, second, ~~and~~ or third ~~classes~~ class;

(2) two in counties of the fourth class;

(3) one in counties of the fifth, sixth, or seventh ~~and eighth classes~~ class."

Section 3. Section 7-32-2121, MCA, is amended to read:

"7-32-2121. Duties of sheriff. The sheriff must:

(1) preserve the peace;

(2) arrest and take before the nearest magistrate for examination all persons who attempt to commit or have committed a public offense;

(3) prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;

(4) perform the duties of a humane officer within the county with reference to the protection of dumb animals;

(5) attend all courts, except ~~justices~~ municipal, justices', and city courts, at their respective terms or sessions held within the county and obey their lawful orders and directions;

(6) command the aid of as many inhabitants of ~~his~~ the county as ~~may be~~ are necessary in the execution of ~~these~~ the

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THIRD READING

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sheriff's duties;

(7) take charge of and keep the county jail and the prisoners therein;

(8) endorse upon all notices and process the year, month, day, hour, and minute of reception and issue therefor to the person delivering them, on payment of fees, a certificate showing the names of the parties, the title of the paper, and the time of reception;

(9) serve all process or notices in the manner prescribed by law;

(10) certify in writing upon the process or notices the manner and time of service or, if he fails to make service, the reasons of this failure, and return the same papers without delay; and

(11) perform such other duties as are required ~~of him~~ by law."

Section 4. Section 7-32-2123, MCA, is amended to read:

"7-32-2123. Appointment of deputy sheriff to act as jailer. The sheriff may appoint two deputies in counties of the first, second, and or third ~~classes~~ class and one deputy in counties of the fourth, fifth, sixth, or seventh~~--and eighth classes~~ class who shall act as jailer and receive the same salary as other deputy sheriffs."

Section 5. Section 7-32-2132, MCA, is amended to read:

"7-32-2132. Liability for escape in civil actions. (1)

A sheriff who ~~suffers~~ fails to prevent the escape or rescue of a person arrested in a civil action without the consent or connivance of the party in whose behalf the arrest or imprisonment was made is liable as follows:

(a) When the arrest is upon an order to hold to for bail or upon a surrender in exoneration of bail before judgment, he the sheriff is liable to the plaintiff as for the bail.

(b) When the arrest is on an execution or commitment to enforce the payment of money, he the sheriff is liable for the amount expressed in the execution or commitment.

(c) When the arrest is on an execution or commitment other than to enforce the payment of money, he the sheriff is liable for the actual damages sustained.

(2) Upon being sued for damages for an escape or rescue, he the sheriff may introduce evidence in mitigation or exculpation.

(3) An action cannot may not be maintained against a sheriff for a rescue or for an escape of a person arrested upon an execution or commitment if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail or is retaken by the sheriff."

Section 6. Section 7-32-2143, MCA, is amended to read:

"7-32-2143. Mileage and expenses of sheriff in general. (1) Except as provided in 7-32-2144 and 7-32-2145,

in addition to the fees specified in 7-32-2141 and 7-32-2142, the sheriff shall receive for each mile actually traveled in serving any writ, process, order, or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail only his actual expenses when such travel is made by railroad or airline; and when travel is other than by railroad or airline, he shall receive a mileage allowance as provided in 2-18-503 for each mile actually traveled by him both going and returning and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail. He shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and ~~dieting~~ feeding such persons during such transportation. ~~Where~~ Whenever more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, ~~but~~ only one mileage ~~shall~~ may be charged.

(2) No mileage ~~shall~~ may be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county shall be paid over to the county treasurer and deposited in the county general

fund.

(3) (a) No mileage ~~must~~ may be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice, or paper when the same accompanies the summons and the service thereof may be made at the time of the service of the summons, ~~unless~~ except for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time or when any paper or papers are served on more than one person on the same trip, ~~but~~ only one mileage ~~must~~ may be allowed or charged; and in the service of subpoenas, ~~but~~ only one mileage ~~must~~ may be charged when the persons named therein live in the same place or in the same direction; but mileage ~~must~~ may be charged for the longest distance actually traveled. Any writ, order, or other paper for service must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed only from such place to the place of service. When two or more officers travel in the same automobile in the discharge of any duty, ~~but~~ only one mileage ~~shall~~ may be allowed.

(b) When any sheriff or constable serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case must

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may be allowed for less than 1 mile actually traveled."

Section 7. Section 7-32-2144, MCA, is amended to read:

"7-32-2144. Mileage and expenses of sheriff for delivery of prisoners and mentally ill persons. (1) ~~Sheriffs~~ A sheriff delivering prisoners at the state prison or ~~reform school~~ a juvenile correctional facility or mentally ill persons at the Warm Springs state hospital ~~shall receive~~ or other mental health facility receives actual expenses necessarily incurred in their transportation. The expenses ~~shall~~ include the expenses of the sheriff in going to and returning from ~~such~~ the institution. ~~They~~ The sheriff shall take vouchers for every item of ~~expenses incurred by them in such transportation~~ expense. The amount of these expenses, as shown by the vouchers when ~~served~~ presented by ~~said~~ the sheriff, shall be audited and allowed by the department of administration or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties. In determining the actual expense if travel is by a privately owned vehicle, the mileage rate shall be allowed as provided in subsection (2). No other or further compensation ~~shall~~ may be received by sheriffs for such expenses.

(2) ~~While~~ Unless otherwise provided, while in the discharge of his duties, both civil and criminal, the

sheriff ~~shall receive~~ receives a mileage allowance as provided in 2-18-503. The sheriff shall also be reimbursed for actual and necessarily incurred expenses for transporting, lodging, and ~~meals of~~ feeding persons ordered by the court as provided in 2-18-501 through 2-18-503. The county ~~shall~~ is not be liable for and the board of county commissioners ~~shall~~ may not pay for any claim of the sheriff or other officer for any other expenses incurred in travel or for subsistence in cases where mileage is allowed under this section, the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work."

Section 8. Section 7-32-4112, MCA, is amended to read:

"7-32-4112. Qualifications of policemen. (1) ~~(a) The members of a police department of any city at the time of their appointment under this part shall not be less than 20 years of age or more than 40 years of age.~~

~~(b)~~--The members of the police department on the active list of any city at the time of their appointment under this part ~~shall~~ may not be less than 18 years of age or more than 35 years of age, but this restriction ~~shall~~ does not apply to any member of any ~~present~~ police department as of July 2, 1973, ~~to police reserves provided for in this part, or~~ to honorably discharged persons who served in the armed forces of the United States in time of war, providing such time of

service ~~be~~ is not less than 3 months~~,~~ or to applicants for reinstatement under 7-32-4110.

(2) A police officer must be a citizen of the United States and meet the minimum qualifying standards for employment promulgated by the board of crime control."

Section 9. Section 7-32-4116, MCA, is amended to read:

"7-32-4116. Minimum wage of police in first- and second-class cities. (1) Each duly confirmed member of a police department of cities of the first and second class of Montana is entitled to a minimum wage for a daily service of 8 hours' work of at least $750 per month for the first year of service and thereafter at least $750 a month plus 1% of the minimum base monthly salary of $750 for each additional year of service up to and including the 20th year of additional service.

(2) This section ~~shall--apply~~ applies to ~~and--include~~ ~~all~~ cities and towns not of the first class which have ~~heretofore~~ elected ~~or--may--hereafter--elect~~ to come under the provisions of ~~[11-1017 to 11-1030--inclusive]~~ Chapter 120, Laws of 1929, as amended, or Chapter 335, Laws of 1974, as amended."

Section 10. Section 7-32-4303, MCA, is amended to read:

"7-32-4303. Control of shoplifting. The city or town council ~~has--power--to~~ may define shoplifting as ~~theft--in~~

~~conformance--with--law~~ provided in 46-6-501 and to punish persons found guilty thereof."

Section 11. Section 7-33-2312, MCA, is amended to read:

"7-33-2312. Organization of fire company. (1) Every ~~such~~ fire company organized pursuant to 7-33-2312 must choose or elect a foreman, who is the presiding officer, a secretary, and a treasurer and may establish and adopt bylaws and regulations and impose penalties, not exceeding $5 or expulsion for each offense.

(2) Every regularly organized fire department may adopt a department seal, stating the name of the particular fire department to which it belongs, ~~which--must--be~~ The seal is under the control of and for the use of the secretary and shall be affixed by him to exempt certificates, certificates of active membership, and such other documents as the bylaws may provide. The secretary of every department having a seal must take the constitutional oath of office and give such bond as the bylaws provide for the faithful performance of his duties."

Section 12. Section 7-33-4102, MCA, is amended to read:

"7-33-4102. Applicability of part. (1) The provisions of this part ~~shall--in--all--respects--be--applicable--to--and~~ ~~shall~~ govern and control fire departments in every ~~such~~ city

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or town organized under whatever form of municipal government except where this part is in conflict with the commission form of government provided for in part 42 of chapter 3.

(2) Where Whenever the provisions of this part do conflict with the provisions of chapter 3, part 42, pertaining to the commission form of government, the provisions pertaining to the commission form of government shall prevail.

~~(3) This part shall apply to organized fire departments in every city and town of the state of Montana regardless of the form of government under which said city or town may be operating or may at any time adopt.~~"

Section 13. Section 7-35-2122, MCA, is amended to read:

"7-35-2122. County tax levy. The board of county commissioners must, annually at the time of levying county taxes, fix and levy upon all property within ~~said~~ the cemetery district, an amount sufficient to raise the amount certified by the board of cemetery trustees to be raised by a tax on the property of ~~said~~ the district. The tax ~~so levied shall~~ may not exceed 4 mills on each dollar of taxable valuation on the property of ~~said~~ the district."

Section 14. Section 7-35-4104, MCA, is amended to read:

"7-35-4104. Cemeteries on public lands. Incorporated cities or towns and, for unincorporated towns or villages, the board of county commissioners of the county may survey, lay out, and dedicate a portion of the public lands situated in or near ~~such~~ the city, town, or village, not exceeding 5 acres, for cemetery and burial purposes. The survey and description thereof, together with a certified copy of the order made constituting the ~~same~~ land as a cemetery, must be recorded in the office of the county clerk of the county in which the ~~same~~ land is located."

Section 15. Repealer. Sections 11-1935 and 11-2009, R.C.M. 1947, are repealed.

-End-

MARCH 6, 1979
PROCEEDINGS OF THE
HOUSE OF REPRESENTATIVES
LOCAL GOVERNMENT COMMITTEE

The meeting was called to order at 12:30 p.m. by Chairman Hershel Robbins. The secretary called roll and found a majority of members present. Those absent were Representatives Sales, Gould, South, Kessler and Moore.

Chairman Robbins then announced that the committee would hear 16 bills at this meeting. These were considered as recodification bills. He then stated that they would be introduced by Larry Wineberg. However, a member of the committee would have to introduce each bill and carry them on the House floor. The Senators sponsoring the bills had not been asked to be present.

Chairman Robbins then introduced Larry Wineberg. Mr. Wineberg stated the bills had been worked on for several years and at least six months work had gone into the recodification. He stated except for the first bill they go through title VII in the code. In general there were some word changes, such as "treasurer" to "treasury" in eighth class counties. There were also some changes on recall petitions, and he explained many of the laws date back to 1895 and 1900, and commissioners were having problems with enforcement of some of these old laws.

SENATE BILL 334: Senate Bill 334 was introduced by Representative Orren Vinger, District 3. He then called on Larry Wineberg to explain the bill. Mr. Wineberg explained that this law would delete the freeholder requirements for district elections, petitions, and various areas that had required freeholders voting in elections due to the Supreme Court decisions. He stated this would also apply to GO bonds and revenue bonds. He stated that there was one area where this would not apply; this would be irrigation districts because these are charged on the amount of land a person owns and because of this charge, irrigation districts would remain that only landowners could vote in the election. He then further explained regarding page 1, section 3, relating to hospital districts. He explained that in hospital districts the services were available to everyone not just property owners. This was the reason for deletion of the freeholder requirement. It was also explained that there couldn't be freeholder elections in a cemetery district.

Senator Story then stated he would introduce all of the remaining bills, as a representative of the Senate Local Government Committee. The House Local Government Committee could then hear the bills as time permitted. A list of the bills is as follows, as were introduced by Senator Story:

Senate Bill 334 (continued)

Senate Bill 334, sponsored by Senator O'Hara, deleting freeholder requirements in fire, hospital and cemetery districts:

Senate Biil 336, introduced by Senator Story, creating alternate forms of government:

Senate Bill 333, introduced by Senator Watt, also relating to alternative forms of local government:

Senate Bill 308, introduced by Senator Rasmussen, relating to city-county consolidation:

Senate Bill 335, introduced by Senator Lockrem, dealing with local government officers:

Senate Bill 305, introduced by Senator Watt, regarding conduct of business of local officers:

Senate Bill 310, introduced by Senator Story, regarding sovereign immunity of local governments:

Senate Bill 339, introduced by Senator Rasmussen, relating to financial administration and taxation in local governments:

Senate Bill 332, introduced by Senator Watt, dealing with debt managament of local governments:

Senate Bill 350, introduced by Senator McCallum, dealing with forms of GO bonds and sinking funds:

Senate Bill 306, introduced by Senator McCallum, relating to percentage limits of indebtedness of local governments:

Senate Bill 307, introduced by Senator O'Hara, dealing with GO bond review:

Senate Bill 337, introduced by Senator Conover, regarding improvement districts:

Senate Bill 340, introduced by Senator Thomas, regarding transportation, construction, culture and social services departments of local governments:

Senate Bill 314, introduced by Senator Conover, relating to business, agriculture, livestock, weed and pest control districts:

Senate Bill 338, introduced by Senator Peterson, relating to emergency law enforcememt and fire districts.

SENATE BILL 307: Mr. Wineberg explained this deals with the Attorney General's office reviewing bonds and issues of local governments. There were no questions by committee members. Hearing was then closed on Senate Bill 307.

SENATE BILL 337: Mr. Wineberg explained this bill deals with improvement districts and utility services. He stated there basically were no major changes. It did include the freeholder requirements and that change. There were no questions by committee members. Hearing was then closed on Senate Bill 337.

SENATE BILL 340: Larry Wineberg pointed out this bill had been amended by the Senate, page 10, section 13. He stated they had amended parking and parkway. These two words had been eliminated. This appeared to be the only change and hearing was then closed.

SENATE BILL 314: Mr. Wineberg stated this deals with the County Weed Board. It deals with land and agricultural landowners. He stated this would change to residents and would include freeholders. Mr. Wineberg further explained the Senate felt the Weed Board Commission was an agricultural district and should remain with the property owners. There were no questions from committee members and hearing was closed on Senate Bill 314.

SENATE BILL 338: Mr. Wineberg stated the committee should be aware of certain sections, pages 8 and 9, 20 and 40, 18 and 35. He stated this deals with certain exceptions and applications for law enforcement. There were no questions by committee members and hearing was closed on Senate Bill 338.

Chairman Robbins then announced that one bill had been referred to Taxation and inquired if the committee wished to take executive action on the remainder. They stated they did't.

Representative Bertelsen moved that Senate Bill 334 be concurred in. All voted "aye" except Representative Sales. Motion carried.

Representative Gould moved that Senate Bill 336 be concurred in. All voted "aye." Motion carried.

SENATE BILL 333: Representative Kemmis moved Senate Bill 333 be concurred in. All voted "aye." Motion carried.

Representative Waldron then moved that Senate Bill 333 be placed on the consent calendar. Vote was called. Motion did not pass. Senate Bill 333 was not able to be placed on the consent calendar.

SENATE BILL 314: Representative Oberg moved that Senate Bill 314 be concurred in. All voted "aye." Motion carried.

SENATE BILL 338: Representative Kessler moved that Senate Bill 338 be concurred in. Vote was called. All voted "aye" and motion carried.

SENATE BILL 308: Representative Reichert moved that Senate Bill 308 do not be concurred in. She stated this was because this takes out petitions and this is the only way it would be possible for some groups to make their wishes known. She felt the voters did not wish to waive their right to use petitions and they may want to use this at some future time. It was felt there was no objection to this staying on the books even though no one was going to use it. Representative Reichert then stated that if it isn't hurting anyone, then the petition right should remain there. Vote was then called on the motion that Senate Bill 308 do not pass. All voted "aye." Motion carried.

Representative Robbins then assigned Representatives to carry the sixteen bills on the House floor.

There then being no further business to come before the committee, the meeting was duly adjourned.

HERSHEL M. ROBBINS, CHAIRMAN
LOCAL GOVERNMENT COMMITTEE

Patricia Hatfield
Secretary

4. Page 4, line 13.
Following: "~~bid~~"
Insert: "and bid"

5. Page 4, line 14.
Following: "~~by~~"
Insert: "bids by"

And as amended, be concurred in. (84-0)

That SB 334 be concurred in. (68-10)

That SB 336 be concurred in. (80-3)

That SB 333 be concurred in. (77-3)

That SB 335 be concurred in. (78-4)

That SB 305 be concurred in. (79-1)

That SB 310 be concurred in. (71-3)

That SB 339 be concurred in. (71-8)

That SB 332 be concurred in. (78-4)

That SB 350 be concurred in. (81-0)

That SB 307 be concurred in. (86-0)

That SB 337 be concurred in. (78-12)

That SB 340 be concurred in. (75-8)

That SB 314 be concurred in. (76-10)

That SB 338 be concurred in. (77-2)

Meyer moved that SB 32 pass consideration for the day. Motion carried.

That SB 59 be concurred in. (73-6)

That SB 185 be concurred in. (83-0)

That SB 296 be concurred in. (65-26)

Quilici moved that SB 390 pass consideration for the day. Motion carried.

That SB 396 be concurred in. (78-0)

That SB 407 be concurred in. (79-8)

That SB 441 be concurred in. (75-3)

Baeth moved that SB 442 be placed at the bottom of the board. Motion carried.

That SB 455 be concurred in. (81-0)

That SB 458 be concurred in. (64-10)

That SB 489 be concurred in. (77-4)

Ellison moved that SB 496 pass consideration for the day. Motion carried.

K. Robbins moved that SB 500 pass consideration for the day. Motion carried.

Excused: Bertelsen, Burnett, Ellerd, Gould, Kropp, Oberg, Porter, Quilici, Vinger.
Total 9

Absent or not voting: Lory, Shelden.
Total 2

Senate Bill No. 336 was concurred in by the following vote:

Ayes: Anderson, Azzara, Baeth, Bardanouve, Bengtson, Bennett, Conroy, Cooney, Daily, Dassinger, Day, Donaldson, Dozier, Dussault, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Feda, Frates, Gesek, Gilligan, Hand, Harper, Harrington, Hayne, Hemstad, Hirsch, Holmes, Huennekens, Hurwitz, Iverson, Jensen, Johnson, Johnston, Kanduch, Keedy, Kemmis, Kessler, Keyser, Kvaalen, Lien, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Moore, Nathe, Nordtvedt, O'Connell, Pavlovich, Pistoria, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Roth, Sales, Schultz, Scully, Seifert, Sivertsen, Smith, South, Spilker, Staigmiller, Stobie, Teague, Thoft, Tropila, Uhde, Underdal, Vincent, Waldron, Williams, Wood, Wyrick, Yardley, Mr. Speaker.
Total 87

Noes: Brand, Curtiss.
Total 2

Excused: Bertelsen, Burnett, Ellerd, Gould, Kropp, Oberg, Porter, Quilici, Vinger.
Total 9

Absent or not voting: Lory, Shelden.
Total 2

Senate Bill No. 338 was concurred in by the following vote:

Ayes: Anderson, Azzara, Baeth, Bardanouve, Bengtson, Bennett, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dozier, Dussault, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Feda, Frates, Gesek, Gilligan, Hand, Harper, Harrington, Hayne, Hemstad, Hirsch, Holmes, Huennekens, Hurwitz, Iverson, Jensen, Johnson, Johnston, Kanduch, Keedy, Kemmis, Kessler, Keyser, Kvaalen, Lien, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Moore, Nathe, Nordtvedt, Oberg, O'Connell, Pavlovich, Pistoria, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Roth, Sales, Schultz, Scully, Seifert, Sivertsen, Smith, South, Spilker, Staigmiller, Stobie, Teague, Thoft, Tropila, Uhde, Underdal, Vincent, Waldron, Williams, Wood, Wyrick, Yardley, Mr. Speaker.
Total 89

Noes: Brand.
Total 1

Excused: Bertelsen, Burnett, Ellerd, Gould, Kropp, Porter, Quilici, Vinger.
Total 8

Absent or not voting: Lory, Shelden.
Total 2

Senate Bill No. 339 was concurred in by the following vote:

Ayes: Anderson, Azzara, Baeth, Bardanouve, Bengtson, Bennett, Conroy, Cooney, Daily, Dassinger, Day, Donaldson, Dozier, Dussault, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Feda, Frates, Gilligan, Hand, Harper,

SENATE BILL NO. 338

INTRODUCED BY PETERSON

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LOCAL GOVERNMENT LAWS RELATING TO GENERAL EMERGENCY AND PROTECTIVE SERVICES, TO LAW ENFORCEMENT, TO FIRE PROTECTION, AND TO CEMETERY SERVICES; REPEALING SECTIONS 11-1935 AND 11-2009, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-31-110, MCA, is amended to read:

"7-31-110. Effect of election. (1) If ~~it appears from the result of such election that~~ a majority of the votes cast were for the contract and bonds, then ~~said~~ the contract ~~shall be~~ is in full force and effect and the bonds shall be issued and disposed of in the manner provided in this part.

(2) If ~~it shall appear from the result of such election that~~ there was a tie vote or a majority of ~~said~~ the votes were cast against the contract and bonds, then the contract and surety bond given for its fulfillment ~~shall be null and~~ are void ~~and of no effect~~ and ~~said~~ the bonds ~~and none thereof~~ shall not be issued."

Section 2. Section 7-32-2103, MCA, is amended to read:

"7-32-2103. Limitation on number of deputy sheriffs. The whole number of deputies allowed the sheriff is one undersheriff and, in addition, not to exceed the following number of deputies:

(1) six in counties of the first, second, and or third ~~classes~~ class;

(2) two in counties of the fourth class;

(3) one in counties of the fifth, sixth, or seventh ~~and eighth classes~~ class."

Section 3. Section 7-32-2121, MCA, is amended to read:

"7-32-2121. Duties of sheriff. The sheriff must:

(1) preserve the peace;

(2) arrest and take before the nearest magistrate for examination all persons who attempt to commit or have committed a public offense;

(3) prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;

(4) perform the duties of a humane officer within the county with reference to the protection of dumb animals;

(5) attend all courts, except ~~justices~~ municipal, justices', and city courts, at their respective terms or sessions held within the county and obey their lawful orders and directions;

(6) command the aid of as many inhabitants of ~~his~~ the county as ~~may be~~ are necessary in the execution of these the

REFERENCE BILL

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sheriff's duties;

(7) take charge of and keep the county jail and the prisoners therein;

(8) endorse upon all notices and process the year, month, day, hour, and minute of reception and issue therefor to the person delivering them, on payment of fees, a certificate showing the names of the parties, the title of the paper, and the time of reception;

(9) serve all process or notices in the manner prescribed by law;

(10) certify in writing upon the process or notices the manner and time of service or, if he fails to make service, the reasons of this failure, and return the same papers without delay; and

(11) perform such other duties as are required of him by law."

Section 4. Section 7-32-2123, MCA, is amended to read:

"7-32-2123. Appointment of deputy sheriff to act as jailer. The sheriff may appoint two deputies in counties of the first, second, and or third classes class and one deputy in counties of the fourth, fifth, sixth, or seventh--and eighth classes class who shall act as jailer and receive the same salary as other deputy sheriffs."

Section 5. Section 7-32-2132, MCA, is amended to read:

"7-32-2132. Liability for escape in civil actions. (1) A sheriff who suffers fails to prevent the escape or rescue of a person arrested in a civil action without the consent or connivance of the party in whose behalf the arrest or imprisonment was made is liable as follows:

(a) When the arrest is upon an order to hold to for bail or upon a surrender in exoneration of bail before judgment, he the sheriff is liable to the plaintiff as for the bail.

(b) When the arrest is on an execution or commitment to enforce the payment of money, he the sheriff is liable for the amount expressed in the execution or commitment.

(c) When the arrest is on an execution or commitment other than to enforce the payment of money, he the sheriff is liable for the actual damages sustained.

(2) Upon being sued for damages for an escape or rescue, he the sheriff may introduce evidence in mitigation or exculpation.

(3) An action cannot may not be maintained against a sheriff for a rescue or for an escape of a person arrested upon an execution or commitment if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail or is retaken by the sheriff."

Section 6. Section 7-32-2143, MCA, is amended to read:

"7-32-2143. Mileage and expenses of sheriff in general. (1) Except as provided in 7-32-2144 and 7-32-2145,

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in addition to the fees specified in 7-32-2141 and 7-32-2142, the sheriff shall receive for each mile actually traveled in serving any writ, process, order, or other paper, including a warrant of arrest, or in conveying a person under arrest before a magistrate or to jail only his actual expenses when such travel is made by railroad or airline; and when travel is other than by railroad or airline, he shall receive a mileage allowance as provided in 2-18-503 for each mile actually traveled by him both going and returning and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to jail. He shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and ~~dieting~~ feeding such persons during such transportation. Where Whenever more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more prisoners, but only one mileage ~~shall~~ may be charged.

(2) No mileage ~~shall~~ may be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county shall be paid over to the county treasurer and deposited in the county general

fund.

(3) (a) No mileage ~~must~~ may be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice, or paper when the same accompanies the summons and the service thereof may be made at the time of the service of the summons, ~~unless~~ except for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time or when any paper or papers are served on more than one person on the same trip, but only one mileage ~~must~~ may be allowed or charged; and in the service of subpoenas, but only one mileage ~~must~~ may be charged when the persons named therein live in the same place or in the same direction; but mileage ~~must~~ may be charged for the longest distance actually traveled. Any writ, order, or other paper for service must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed only from such place to the place of service. When two or more officers travel in the same automobile in the discharge of any duty, but only one mileage ~~shall~~ may be allowed.

(b) When any sheriff or constable serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case must

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may be allowed for less than 1 mile actually traveled."

Section 7. Section 7-32-2144, MCA, is amended to read:

"7-32-2144. Mileage and expenses of sheriff for delivery of prisoners and mentally ill persons. (1) ~~Sheriffs~~ A sheriff delivering prisoners at the state prison or ~~reform school~~ a juvenile correctional facility or mentally ill persons at the Warm Springs state hospital ~~shall receive~~ or other mental health facility receives actual expenses necessarily incurred in their transportation. The expenses ~~shall~~ include the expenses of the sheriff in going to and returning from ~~such~~ the institution. ~~They~~ The sheriff shall take vouchers for every item of ~~expenses incurred by them in such transportation~~ expense. The amount of these expenses, as shown by the vouchers when ~~served~~ presented by ~~said~~ the sheriff, shall be audited and allowed by the department of administration or by the board of county commissioners, as the case may be, and paid out of the same money and in the same manner as are other expense claims against the state or counties. In determining the actual expense if travel is by a privately owned vehicle, the mileage rate shall be allowed as provided in subsection (2). No other or further compensation ~~shall~~ may be received by sheriffs for such expenses.

(2) ~~While~~ Unless otherwise provided, while in the discharge of his duties, both civil and criminal, the

sheriff ~~shall receive~~ receives a mileage allowance as provided in 2-18-503. The sheriff shall also be reimbursed for actual and necessarily incurred expenses for transporting, lodging, and ~~meals of~~ feeding persons ordered by the court as provided in 2-18-501 through 2-18-503. The county ~~shall~~ is not be liable for and the board of county commissioners ~~shall~~ may not pay for any claim of the sheriff or other officer for any other expenses incurred in travel or for subsistence in cases where mileage is allowed under this section, the fees for mileage named in this section being in full for all such traveling expenses in both civil and criminal work."

Section 8. Section 7-32-4112, MCA, is amended to read:

"7-32-4112. Qualifications of policemen. (1) ~~(a) The members of a police department of any city at the time of their appointment under this part shall not be less than 20 years of age or more than 40 years of age.~~

~~(b)~~--The members of the police department on the active list of any city at the time of their appointment under this part ~~shall~~ may not be less than 18 years of age or more than 35 years of age, but this restriction ~~shall~~ does not apply to any member of any present police department as of July 2, 1973, ~~to police reserves provided for in this part, or~~ to honorably discharged persons who served in the armed forces of the United States in time of war, providing such time of

service be is not less than 3 months; or to applicants for reinstatement under 7-32-4110.

(2) A police officer must be a citizen of the United States and meet the minimum qualifying standards for employment promulgated by the board of crime control."

Section 9. Section 7-32-4116, MCA, is amended to read:

"7-32-4116. Minimum wage of police in first- and second-class cities. (1) Each duly confirmed member of a police department of cities of the first and second class of Montana is entitled to a minimum wage for a daily service of 8 hours' work of at least $750 per month for the first year of service and thereafter at least $750 a month plus 1% of the minimum base monthly salary of $750 for each additional year of service up to and including the 20th year of additional service.

(2) This section ~~shall apply~~ applies to ~~and include~~ all cities and towns not of the first class which have heretofore elected ~~or may hereafter elect~~ to come under the provisions of ~~[11-1817 to 11-1830, inclusive]~~ Chapter 120, Laws of 1929, as amended, or Chapter 335, Laws of 1974, as amended."

Section 10. Section 7-32-4303, MCA, is amended to read:

"7-32-4303. Control of shoplifting. The city or town council ~~has power to~~ may define shoplifting as ~~theft in~~

~~conformance with law~~ provided in 46-6-501 and to punish persons found guilty thereof."

Section 11. Section 7-33-2312, MCA, is amended to read:

"7-33-2312. Organization of fire company. (1) Every ~~such~~ fire company organized pursuant to 7-33-2312 must choose or elect a foreman, who is the presiding officer, a secretary, and a treasurer and may establish and adopt bylaws and regulations and impose penalties, not exceeding $5 or expulsion for each offense.

(2) Every regularly organized fire department may adopt a department seal, stating the name of the particular fire department to which it belongs, ~~which must be~~ The seal is under the control of and for the use of the secretary and shall be affixed by him to exempt certificates, certificates of active membership, and such other documents as the bylaws may provide. The secretary of every department having a seal must take the constitutional oath of office and give such bond as the bylaws provide for the faithful performance of his duties."

Section 12. Section 7-33-4102, MCA, is amended to read:

"7-33-4102. Applicability of part. (1) The provisions of this part ~~shall in all respects be applicable to and~~ shall govern and control fire departments in every ~~such~~ city

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or town organized under whatever form of municipal government except where this part is in conflict with the commission form of government provided for in part 42 of chapter 3.

(2) ~~where~~ Whenever the provisions of this part do conflict with the provisions of chapter 3, part 42, pertaining to the commission form of government, the provisions pertaining to the commission form of government ~~shall~~ prevail.

~~(3)--this--part---shall---apply---to---organized---fire departments--in--every-city-and-town-of-the-state-of-Montana regardless-of-the-form-of-government-under-which--said--city or-town-may-be-operating-or-may-at-any-time-adopt.~~"

Section 13. Section 7-35-2122, MCA, is amended to read:

"7-35-2122. County tax levy. The board of county commissioners must, annually at the time of levying county taxes, fix and levy upon all property within ~~said~~ the cemetery district, an amount sufficient to raise the amount certified by the board of cemetery trustees to be raised by a tax on the property of ~~said~~ the district. The tax so ~~levied shall~~ may not exceed 4 mills on each dollar of taxable valuation on the property of ~~said~~ the district."

Section 14. Section 7-35-4104, MCA, is amended to read:

"7-35-4104. Cemeteries on public lands. Incorporated cities or towns and, for unincorporated towns or villages, the board of county commissioners of the county may survey, lay out, and dedicate a portion of the public lands situated in or near ~~such~~ the city, town, or village, not exceeding 5 acres, for cemetery and burial purposes. The survey and description thereof, together with a certified copy of the order made constituting the ~~same~~ land as a cemetery, must be recorded in the office of the county clerk of the county in which the ~~same~~ land is located."

Section 15. Repealer. Sections 11-1935 and 11-2009, R.C.M. 1947, are repealed.

-End-